

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

IN THE MATTER OF
Dee Ann M. Anderson & Robert W. Posik,
Petitioners-Appellants.

v.

Poweshiek County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-79-0026
Parcel No. 630-3221400

On September 16, 2009, the above-captioned appeal came on for consideration before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioners-Appellants, Dee Ann M. Anderson and Robert W. Posik, are self-represented and submitted evidence in support of their petition. They did not participate in the hearing. The Poweshiek County Board of Review designated Poweshiek County Attorney Michael W. Mahaffey as its legal representative. The Board submitted documentary evidence prepared by Deputy Assessor Dotty Bates in support of its position. The Appeal Board now having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Dee Ann M. Anderson and Robert W. Posik, owners of property located at 266 Eastside Lane, Lake Ponderosa, Montezuma, Iowa, appeal from the Poweshiek County Board of Review decision reassessing their property. The subject property is a 3492 square-foot lakefront lot that is approximately 28 feet by 140 feet and located on Lake Ponderosa. The real estate was classified as rural residential for the January 1, 2009, assessment and valued at \$25,730.

The appellants, Anderson/Posik protested to the Board of Review on the grounds that the property was not equitable with other like properties under Iowa Code section 441.37(1)(a), that the property was not taxable or misclassified under Iowa Code section 441.37(1)(c), and that there was an error in the assessment under Iowa Code section 441.37(1)(d). The appellants claimed that \$230 was the actual value and fair assessment of the property. In response to the protest, the Board of Review notified the appellants that the January 1, 2009, assessment would remain unchanged stating in part, “the board has determined that said assessment is equitable, that the property is assessable by law, and that there is not an error in the assessment.”

The appellants then filed an appeal with this Board on the grounds of inequity, error in the assessment and additionally allege there has been a downward trend in value under Iowa Code section 441.35. This Board will only consider the ground of inequity as this was the only ground alleged to this Board that was also alleged to the Board of Review. The downward trend ground was not appealed to the Board of Review, and the error alleged clearly indicated that the subject property should be assessed like other vacant lots on Lake Ponderosa, which is an equity claim.

Lake Ponderosa is a 350 acre private lake with approximately 670 residential structures surrounding the lake. Typically, non-lakefront lots are sold with access rights for boat storage and dock privileges on the access lots owned by Ponderosa Utilities. When non-lakefront lots are bought and sold the access rights do not transfer title, and the ownership rights are owned by Ponderosa Utilities. The assessed value assigned to access lots is \$230. The \$230 is reflective of the value first assigned for tracking purposes when the lake was originally platted.

The appellants claim the subject property is a stand alone lot with no structures and is no different than the access lots owned by Ponderosa Utilities. They also claim that their half-lot is non-buildable due to size and location and is no different than a lakefront access lot. They submitted five

equitable comparables that are access lots assessed at \$230 that, in their opinion, are comparable to the subject property.

We find the appellants' lot, however, is different from the access lots. Not only can the appellants transfer their lot because they hold it in fee simple, but they also have exclusive rights.

Deputy Assessor Dotty Bates testified on behalf of the Poweshiek County Board of Review. Ms. Bates testified that rear lots are not sold, not for sale, and title does not transfer from Ponderosa Utilities when access lots sell. She stated each lake lot is valued on a front foot basis with adjustments made for vacancy, depth, size, and other factors, and the appellants' lot is valued equitably with other similar lots. Ms. Bates also testified that the appellants are comparing a lot they received by warranty deed with fee simple title to property held by Ponderosa Utilities, which are to be used only for lake access and the title does not transfer ownership when access is bought and sold. The Board of Review submitted sales information to include the market value of lakefront lots based on size and values.

Reviewing all the evidence, we find that comparing ownership value of a fee simple lot with the value of an access lot is not an equitable comparison and there is not an error in the assessment. This Board finds that the testimony of Deputy Assessor Bates to be reliable and complete. Therefore, this Board finds the appellants failed to meet their burden of proof and affirm the 2009 Poweshiek County Board of Review assessment.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only

those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. Iowa Code § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa code § 441.21.(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The gist of this test is ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% of market value. § 441.21(1). It is our conclusion the appellants failed to present persuasive evidence sufficient to support the claim that their assessment was not equitable as compared with assessments of other like property in the taxing district.


Viewing the evidence as a whole, we determine the appellants, Dee Ann M. Anderson and Robert W. Posik failed to prove that their property is inequitably assessed. The properties the appellants contend are comparable are not for assessment purposes. We, therefore, affirm the

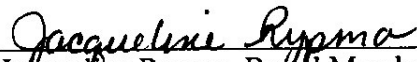
appellants' property assessment as determined by the Board of Review at \$25,730 as of January 1, 2009.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Poweshiek County Board of Review is affirmed.

The Secretary of the Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Poweshiek County Auditor and all tax records, assessment books and other records pertaining to the assessment reference herein on the subject parcel shall be corrected accordingly.

Dated this 9 day of October, 2009.


Richard Stradley, Presiding Officer


Jacqueline Rypma, Board Member


Karen Oberman, Board Chair

Copies to:

Dee Ann M. Anderson & Robert W. Posik
PO Box 530747
San Diego, CA 92153-0747
APPELLANTS

Mike W. Mahaffey
Poweshiek County Attorney
107 S. 4th, P.O. Box 850
Montezuma, IA 50171

Diane Dawley
Poweshiek County Auditor
P.O. Box 57
Montezuma, IA 50171

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>10-9</u> , 200 <u>9</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
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